



Wireless Application Service Providers' Association

Report of the Adjudicator

Complaint number	#30979
Cited members	WASPA BMOBIL PTE LTD (1438)
Notifiable members	WASPA ALL
Source of the complaint	WASPA Media Monitor
Complaint short description	Misleading Marketing / promotion and subscription service
Date complaint lodged	2016-07-08
Date of alleged breach	Unknown
Applicable version of the Code	14.3
Clauses of the Code cited	4.2., 5.4., 5.5., 15.4., 15.5.
Related complaints considered	#29804 #29641 #27229 #30842 #27464
Fines imposed	<ul style="list-style-type: none"> R 75 000.00 fine for breach of all clauses breached payable within one week of receipt of adjudication

	<ul style="list-style-type: none"> - Clause 4.2 R 10 000.00 - Clause 5.4 R 10 000.00 - Clause 5.5 R 10 000.00 - Clause 15.4 R 25 000.00 - Clause 15.5 R 20 000.00
Other sanctions	<ul style="list-style-type: none"> - Database generated from the service in question is not to be marketed to from the date of receipt of this adjudication. - All subscriber of this service are to be provided a full refund, from the 08-07-2016 up to and until the publication date of this report.
Is this report notable?	<i>Not Notable</i>
Summary of notability	N/A

Initial complaint

The Media Monitoring team came across a subscription service run by Netsmart/Bmobil who entices subscribers with the chance to win an iPhone, they have also indicated that there was an attempt by the team to guide and educate Netsmart on how to market their subscription services. It was made very clear that marketing such services via the "winning of a phone" is strictly prohibited and that the content of the service must be marketed with the secondary objective being the potential to win a phone.

Notable the team determined that the marketing is misleading consumers and consumers are not presented with content upfront, they only receive content after they have joined the service. Accordingly the team was resolute that the guidance offered was being ignored.

The request is that the service is deactivated, that that database generated from the service, is not marketed to in future and that consumers are refunded.

Member's response

The member acknowledged the formal notice #30979 and advised that changes to the landing page per made, new screenshots were also attached as it is important to them that the service is clear to the user when subscribing to the service.

Further, the member requested that if anything else was needed to improve the campaign, that they be informed.

Complainant's response

No further response provided.

Member's further response

No further response provided.

Sections of the Code considered

4.2. Members must at all times conduct themselves in a professional manner in their dealings with the public, customers, other service providers and WASPA.

5.4. Members must have honest and fair dealings with their customers.

5.5. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: "to claim your prize, join this service".)

15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: "if you join this subscription service, you will be entered into a monthly draw for a prize".)

Decision

Many people complain every year that they are unwittingly signed up to expensive subscription services that can end up costing them hundreds of rands without their knowledge. In this present case the essence of the complaint lies in the fact that all the initial material appears to offer a guaranteed prize, but after subscribing it appears that the prize is in fact not guaranteed and that there are various content offerings available.

The invitation itself is over the top in that the **“get now”** call to action button mentions nothing about a subscription service, while the **“be one of the very first people to get your hands on the brand new iphone 6 S”** is extremely appealing giving the user the impression that he/ she is entering a competition.

Bait-n-Switch marketing is out of hand, the campaign offers someone a chance to win but the bounce back indicates that there is a condition of subscription attached along with securing the user into a database wherein various other marketing messages are sent to them in the pretence that they “willingly subscribed”.

I concur with the adjudicator in complaint #29804 –

“when viewing the member’s promotional tactics as a whole, and based on my finding that this particular campaign is reasonably likely to deceive or mislead consumers, I believe the member’s conduct falls far short of the standards of professionalism, honesty and fairness expected of a WASPA member. It is exactly this type of conduct that poses a risk of widespread harm to consumers and potentially brings the WASP industry as a whole into disrepute”.

Further, I note that when brought to the attention of the aggregator, this was their response, *“During the recent Heads Up for this service, (#553) we advised and guided our IP in changing their promotional material, and believed the case to be closed. Yet, I was surprised to read in this complaint (#30979) wording conveying that it’s Netsmart’s service and that Netsmart ignored WASPA guidance”*

The member clearly does not have the best interests of the user or the industry at heart, neither are they interested in ensuring that the reputation of the industry is upheld. There

was never any professional dealings with their users and the entire campaign is deceitful and ambiguous. The breach of all code clauses cited are blatant and for that I find the member in violation of the code of conduct and have imposed the fine and sanctions based on them knowingly disseminating a deceitful campaign.

Sanctions

Fine;-

R 75 000.00 fine for breach of all clauses breached and such is payable within one week of receipt of the adjudication

-	Clause 4.2	R 10 000.00
-	Clause 5.4	R 10 000.00
-	Clause 5.5	R 10 000.00
-	Clause 15.4	R 25 000.00
-	Clause 15.5	R 20 000.00

Further,

1. Database generated from the service in question is not to be marketed to from the date of receipt of this adjudication.
 2. All consumers baited into this service are to be provided a full refund, from the 08-07-2016 up to and until the publication date of this report.
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Matters referred back to WASPA

None.
